IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

CRL.A.No. 910 of 2004()

SC.93/2003 ON THE FILE OF THE COURT OF THE SPECIAL JUDGE (NDPS ACT, CASES), VADAKARA

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APPELLANT:

HARRIS,
C.NO.589, CENTRAL PRISON, KANNUR.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENT:

STATE OF KERALA.

BY PUBLIC PROSECUTOR SRI.S.DILEEP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl. A. No. 910 of 2004

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Dated this the 7th day of February, 2007

JUDMENT

Appellant who was accused in S.C.No.93/2003 on the file of the Court of the Special Judge (the Narcotic Drugs and Psychotropic Substances Act, 1985 Act Cases) Vadakara, faced trial for an offence punishable under section 17(c) the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter referred to as `the Act'. To prove the case against the appellant, PW1 to 6 were examined and Exts.P1 to P9 were marked. Exts.MO1 to MO5 were also marked on the side of the prosecution. On the side of the defence, DW1 and DW2 were examined. After closing the evidence the appellant was questioned under section 313 of the Cr.P.C. He denied the allegation levelled against him and stated that nothing had been recovered from his possession and he was arrested from a mosque. On accepting the evidence of the prosecution, the trial court found that the appellant guilty under section 17(c) of the Act and he was convicted thereunder and sentenced to undergo rigorous imprisonment for twelve years and to pay fine of Rs.1,00,000/- and in default to undergo rigorous imprisonment for a further period of one year. The above conviction and sentence are assailed in this appeal.

2. Heard learned counsel for the appellant as well as the learned Public Prosecutor.

3. Learned counsel for the appellant had mainly taken three contentions before this Court to challenge the impugned judgment. Firstly, it is contended that the trial court had committed an error in placing reliance on the evidence of PW1 to find the appellant guilty under section 17(c) of the Act, as the evidence of this witness is contradictory. Secondly, it is contended that even if the evidence of this witness is accepted, the appellant could not be found guilty of the charges levelled against him. Thirdly, it is contended that the trial court ought to have found that the prosecution has not proved the entire prosecution case as such, as nothing had been recovered from the possession of the appellant.

4. The prosecution case is as follows:- On 26-11-2002 at 4 p.m. PW1, Sub Inspector of Tanur Police Station, received an information over telephone to the effect that three persons had brought narcotic drugs for sale at the western side of the Over Bridge of Railway Station, Tanur. After recording the information in the general diary and after reporting the matter to the Circle Inspector, Tanur, PW1 along with police party went to the spot at 4.20 p.m. and when they reached the place of occurrence they

found the appellant and two others sitting on the granite stones, which were stocked on the western side of the Over Bridge of Railway Station, Tanur. On seeing the police party, they tried to ran away from the scene of occurrence, but they were intercepted and questioned. The appellant was holding a red colour big shopper on his hand. The co-accused , Amjith, was holding a blue colour big shopper on his hand . On examination, it was found the big shoppers contained opium. They told that hey had brought it for sale to one Sageer belonging to Tirur and they were waiting for him. PW1 thereafter informed the appellant and two others that they were going to be searched and that they had a right to be searched in the presence of a Magistrate or a Gazetted Officer and asked them whether they wanted to exercise such right. The appellant and other accused persons opted the presence of a Gazetted Officer. Accordingly, the C.I. of Tanur was brought to the spot and thereafter in his presence and in the presence of independent witnesses, recovered the big shoppers held by the appellant and co-accused, Amjith. PW1 thereafter searched the body of the co-accused, Musthafa but nothing was found. On weighing the opium recovered from the possession of the appellant, its weight was found to be 3 kg. and 600 grams. The weight of the opium seized from the possession of Anmjath was found to be 5 kg. and 750 grams. The appellant and other accused were arrested and

after the formalities the articles were seized under a seizure mahazar prepared at the spot. Thereafter, the appellant and two others and the contraband articles were removed to the Tanur Police Station and a case was registered against them.

5. PW1 proved Exts.P1 to P7 and identified MO1 to MO5. As per Ext.P9 chemical examination report, it is proved that the contraband article seized from the possession of the appellant and other accused was opium. The evidence of PW1 is corroborated by the evidence of PW2 who was an independent witness to the search and seizure and attestor in Ext.P3 seizure mahazar prepared by PW1. His evidence would show that he was present at the time of search and seizure and the arrest of the accused. He supported the prosecution case. PW3-Police Constable attached to the Talur Police Station , who was a member of the raiding party, had fully supported the prosecution case. PW4 C.I. of Police whose presence PW1 had conducted the search, seizure and arrest of the accused. PW5 and PW6 continued the investigation and laid the final charge. Relying on the evidence of the prosecution the trial court found that the appellant was found in exclusive conscious possession of 3 kg. and 600 grams of opium in contravention of the provisions of the Act.

6. The contention of the the learned counsel for the appellant is that the evidence of PW4 that he came to the spot only at 5 p.m. creates a doubt on the prosecution case. The prosecution case is that MO5 big shopper was in the possession of the appellant and the same was seized under Ext.P3 seizure mahazar and samples were taken and on examination it was revealed that the sample was opium. It has come out in evidence of PW1, PW3 and PW4, which is supported by PW2 and independent witness and the documents, to show that there was actual seizure of 3 kg. and 600 grams of opium from the big shopper held by the appellant on the day in question. In the above circumstances, even if there is any difference at the time of the arrival of PW4 at the spot does not make the prosecution case as doubtful. In the above circumstances, the contention of the learned counsel is not sustainable. Considering the facts and circumstances of the case, this Court is of the view that the trial court is fully justified in placing reliance on the evidence adduced by the prosecution. Hence, the findings entered by the trial court do not require any interference by this Court.

7. With regard to the sentence awarded against the appellant, as the trial court found that the appellant found guilty under section 17(c) of the Act which provides rigorous imprisonment for a term not less than ten years but which may extend to twenty years and shall also be liable to fine which

shall not be less than one lakh rupees but which may extend to two lakh rupees. Considering the fact that the appellant was in possession of 3 kg. and 600 grams of opium, which is commercial quantity, this Court is not inclined to interfere with the sentence awarded against the appellant. Hence, the appeal fails and it is dismissed.

K. Thankappan,
Judge.

K. Thankappan,J.

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Judgment
7-2-2007